IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2891 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DASTAN PVT. LTD.

Versus

OFFICER ON SPECIAL DUTY UNIT NO.1 (LAND ACQUISITION)

Appearance:

1. Special Civil Application No. 2891 of 2003
MR GM AMIN for Petitioner No. 1
MR RC KODEKAR, AGP for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 23/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE AKSHAY H.MEHTA)

1. The petitioner has approached this Court making a grievance that the application which was filed by it under the provisions of section 28-A of the Land Acquisition Act (hereinafter referred to as 'the Act') has been disposed of by the respondent vide order dated 13th February, 2003 without affording any opportunity of hearing to it. The petitioner has, therefore, prayed that the respondent be directed to first hear the petitioner and then to decide the said application.

2. In short the facts can be stated as under :-

2.1. The land of the petitioner is situated in the sim of village Kathwada/Nikol, Tal. City Dist. Ahmedabad. It was proposed to be acquired by the respondent. After following the due procedure envisaged under the Act, award was declared by the respondent on 22nd September, 1986. It appears that so far the petitioner is concerned, it had accepted the amount of compensation under consent award u/S. 11 (2) of the Act.

2.2. One Dwarkadas Govinddas whose land was acquired under the same notification had approached the Court of the Ld. Joint Civil Judge [S.D.] by filing Reference u/S. 18 of the Act, the case being Land Acquisition Case No. 1400 of 1987 (old no.) which was renumbered as 220 of 1998. The said Reference came to be decided on 30th September, 1999. It also appears that in the Reference the amount was enhanced and the petitioner, which had not filed any reference u/S. 18 of the Act, had made an application dated 4th October, 1999 u/S. 28-A of the Act requesting that the award passed by the respondent in favour of it be brought on par with the award made by the Reference Court.

2.3. It is this application which has been turned down by the respondent without granting any hearing to the petitioner.

2.4. Perusal of the impugned order shows that the application has been rejected by the respondent solely on the ground that since the petitioner had accepted the amount of the consent award u/S. 11(2) of the Act and while granting consent by the petitioner it had also agreed not to approach the Court of law, it was not open for the petitioner to file application u/S. 28-A of the Act.

3. We have heard Mr. G.M. Amin, learned advocate for the petitioner and Mr. Kodekar, Ld. AGP for the respondent. Mr. Amin has submitted that the impugned order is bad in law in as much as it violates principles of natural justice since no hearing has been afforded to the petitioner before disposing of the application filed by it u/S. 28-A of the Act. He has further submitted that the Division Bench of this Court has taken a view in the case of Jayantibhai Kesarbhai Patel v/s. Deputy Collector Land Acquisition and Rehabilitation in Special Civil Application No. 4429 of 1999 dated 5th August, 1999, that the person who has accepted the consent award u/S. 11 (2) of the Act can also be considered to be aggrieved person and he has a right to approach the concerned authority by way of filing application u/S. 28-A of the Act.

3.1. As against that, Mr. Kodekar has submitted that the impugned order is passed keeping in view that the petitioner had consented to accept the amount which was higher than the amount that was awarded by the Land Acquisition Officer to others whose land had been acquired under the same notification and, therefore, the petitioner is not entitled to file application u/S. 28-A of the Act.

4. We have carefully considered the submissions made by the counsels and we have also gone through the record of this petition. The impugned order clearly shows that the application of the petitioner u/S. 28-A of the Act has been turned down solely on the ground that it was a consent award u/S. 11(2) of the Act and, therefore, the petitioner was not entitled to file any application u/S. 28-A of the Act. However, without going into the merits of the reason assigned by the respondent, we are of the opinion that in view of the aforesaid judgment of the Division Bench of this Court, the issue is required to be decided after affording adequate opportunity of hearing to the petitioner. The respondent has not controverted the averment made by the petitioner that no hearing has been afforded to it before deciding the application u/S. 28-A of the Act. The impugned order, therefore, clearly appears to be violative of the principles of natural justice. It is, therefore, required to be quashed and set aside and it is hereby ordered to be quashed and set aside. The respondent is directed to afford to the petitioner adequate opportunity of hearing before taking any decision on the application filed by it under the provisions of section 28-A of the Act. The respondent is also directed to decide the application within a period of three months from the date of receipt of writ of this

order. It is hoped that the petitioner will cooperate in the proceedings. The petition is, therefore, allowed. Rule made absolute with no order as to costs.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.